

The Board of Governors of the Federal Reserve System

Re: Docket No. R-1305
Proposed Rule Amending Regulation Z

Ladies and Gentlemen:

I appreciate the opportunity to offer comments on the above referenced Proposed Rule. I have served as General Counsel to the Texas Association of Mortgage Brokers for a number of years. I had the good fortune of hearing a panel of experts February 6, 2008 at an event sponsored by the National Association of Mortgage Brokers in Washington DC. That panel included Gary Huddleston with HUD, Janis Pappalardo, with the Bureau of Economics, U.S. Federal Trade Commission and Dan S. Sokolov, with the Division of Community Affairs, Board of Governors of the Federal Reserve System. Mr. Sokolov identified himself as one of the attorneys involved in drafting the above reference rule. The Rule was discussed and I must say the government agencies involved in some aspect of regulating the mortgage market apparently do not communicate very often or very well. I mention this because both HUD and the FTC discussed consumer testing of mortgage disclosures they had done, but differed widely on how that testing translates into revised disclosures for consumers. Mr. Sokolov acknowledged the Fed had not conducted consumer testing before publishing the proposed rule but said it planned to do so in early 2008. That is in stark contrast to an FTC principle for rule-making and that is to conduct comprehensive testing before writing the rule.

The Negative Impact of the Proposed Rule on Mortgage Brokers

My comments will focus on how the proposed rule will impact mortgage brokers, consumers and the mortgage transaction. In particular I will comment on item VIII. (A) Creditor Payments to Mortgage Brokers – Section 226.36(a). First in reviewing Section I. Summary of Proposal, I searched for some foundation for the restrictions you propose on payment of YSPs. Certainly, you accurately pointed out many problems in the mortgage market, the subprime market in particular that ultimately impacted all credit markets. But in searching for some good reasons for imposing restrictions on the payment of YSPs, I found very few. I found only statements anecdotal in nature or as hearsay reported. No new studies or other empirical data was cited.

You state for example, “**Anecdotal evidence indicates that consumers in both the prime and subprime markets often believe, in error, that a mortgage broker is obligated to find the consumer the best and most suitable loan terms available.**” That is not an issue for licensed mortgage brokers in Texas and many other states because of the content of state mandated broker disclosures that must be given to consumers at the outset of the relationship. I have attached the Texas broker disclosure as Exhibit A. Please note that the broker is required to tell the borrower the nature of the broker’s relationship with the consumer as well as how the broker will be compensated. Two statements made to the consumer are pertinent to this issue.

First, the borrower when brokering the loan states to the consumer: “While we will seek to assist you in meeting your financial needs, we do not distribute the products of all lenders or investors in the market and cannot guarantee the lowest rate or best terms available in the market.”

Additionally the broker must state: “The retail price we offer you – your interest rate, total points, and fees – will include our compensation. In some cases we may be paid all or part of our compensation by your or by the lender or investor. Alternatively, we may be paid a portion of our compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees. Also, in come cases, if you would rather pay less up-front you may be able to pay a higher interest rate, in which case some or all of our compensation will be paid by the Lender. We also may be paid by the lender based on other goods, services, or facilities performed or provided by us to the Lender.”

The Texas Department of Savings and Mortgage Lending that promulgated the form as part of the regulations issued pursuant to the Texas Mortgage Broker License Act has audited hundreds of mortgage brokers and is charged with handling consumer complaints against mortgage brokers. The agency has made no requests to change the disclosure form. Would Texas qualify as having consumer equivalent protection under the proposed rule? The proposed rule would mandate an agreement inconsistent with the Texas disclosure and many other state mandated disclosures.

In addition to anecdotal evidence **you cite a 2003 survey of older borrowers, seventy percent of the respondents reporting that they had relied a lot on their brokers to find the best mortgage loan for them.** Many state disclosures have been put in place since 2003. What was not reported is how satisfied the respondents were with the loan obtained and their experience in dealing with a mortgage broker. You should be aware that the J.D. Powers and Associates 2005 Home Mortgage Study found that, those customers who used a broker tend to be substantially more satisfied with the broker personnel compared with those who interfaced directly with the lender’s personnel.” Additionally, according to a 2005 independent study conducted by economists at three major universities, broker- originated mortgages or less costly to the borrower than lender-originated mortgages after holding other loan terms and borrower characteristics constant. Another recent study showed that mortgage broker pricing on even subprime loans was less than lender originated loans.

In short, your obsession with broker compensation, and YSP payments in particular is unwarranted, especially in view of what I see as an unintended negative impact on consumers and competition. You acknowledge that broker compensation was not part of your June 2007, but then fail to provide good reasons for including it in your proposed rule, except to say that a number (unspecified) of commentors had raised the issue. A rule that restricts the brokers ability to compete will not be good for consumers. In your summary you lament the fragmentation of the originator market and cite it as exacerbating the problem by making it more difficult for investors to monitor originators and for lenders to monitor brokers. The Association I represent is for a system that

identifies and throws the abusers out of the market, whether brokers or lenders. I am against isolating one group of originators (mortgage brokers) and so restricting them that they can no longer compete fairly. I disagree that lenders and investors do not have the tools to monitor the brokers they choose to do business with. They can vet them in any number of ways: background checks including criminal background checks, comprehensive applications that include business references, state regulatory agency records, net worth or bond requirements, a QC program to monitor the broker's work product and an overall price limitation on total points and fees for the loan. Mortgage brokers do not create the loan products and do not underwrite the loans. Products, product standards and underwriting standards are all developed by the banking community. Banks have the tools, but they have not used them well in some instances.

Mortgage brokers typically have relationships with a variety of investors. They receive pricing quotes daily from all of them. The proposed rule, prohibiting YSP payments to mortgage brokers would significantly impair the mortgage broker's value to the consumer. By requiring the mortgage broker to identify his/her compensation to the penny in advance of performing services, the broker must work off a quote from a single investor on the day the fee disclosure is given. Before a loan is locked there is often a discussion between broker and consumer on various loan products and the consumer's particular interests and circumstances. During this period the broker is also monitoring daily rate sheets. Those rates for various products differ and fluctuate from day to day. Investors providing the rate sheets may be "in the market," "out of the market" or "buying the market" at any given point in time. Requiring selection on day one severely limits the time available to discuss rates and products or indeed find the best product and rate the broker determines is competitive and provides adequate compensation for the broker's services. I believe that such flexibility in shopping the "market" is critical to the broker's role.

The proposed rule, in the name of greater transparency, seeks to require mortgage brokers to give the consumer insight into the mind of the broker and identify broker incentives in formulating the broker "price". The focus on broker compensation can certainly lead to bad results for the consumer.

The FTC and YSP

Just before the last RESPA reform rule was withdrawn in March of 2005, the Federal Trade Commission released the results of consumer testing on mortgage disclosures. What they found was transparency does not always mean the consumer will then make the best choice. The 2004 FTC Study: *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*. Among the conclusions of the Study when mortgage broker compensation is required to be disclosed in detail:

1. The disclosures are likely to lead a significant proportion of borrowers to choose more expensive loans by mistake.
2. The disclosures are likely to cause a substantial bias against broker loans that may reduce competition and increase cost of all mortgages.

The proposed rule does not even mention the FTC studies done in 2004 and 2007, and yet the FTC has done the most comprehensive testing to date. That is difficult to understand.

Please do not implement a rule that would handicap thousands of small business mortgage brokers and hurt the consumer by making the market less competitive. Do not do so without having a better understanding of the role of the mortgage broker. Do not do so until comprehensive consumer testing is done and the FTC studies are taken into consideration. Do not do so in light of conflicts with numerous state disclosures and the new RESPA proposal.

Very truly yours,

Everett L. Anschutz
Robertson – Anschutz
10333 Richmond Ave. Suite 550
Houston, TX 77042

MORTGAGE BROKER/LOAN OFFICER DISCLOSURE

Mortgage Broker or Loan Officer: _____

License Number: _____

The information in this disclosure is provided to clarify the nature of our relationship, my duties to you, and how I am to be compensated as a Mortgage Broker or Loan Officer. This disclosure is a requirement of the Texas Mortgage Broker License Act.

Since I may be working for a company, references to “we” or “us” refer to me and any company for which I am working.

Check ALL that apply

Duties and Nature of Relationship

You, the applicant(s), have applied with us for a residential mortgage loan.

We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will enter into separate independent contractor agreements with various lenders. While we will seek to assist you in meeting your financial needs, we do not distribute the products of all lenders or investors in the market and cannot guarantee the lowest or best terms available in the market.

In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will make your loan ourselves. We may either sell the loan to an investor or retain it. (You will receive a separate disclosure as to how we will handle servicing rights on any such loan.) We have a number of established independent contractor relationships with various investors to whom we sell closed loans. We are not an agent for any such investor in connection with the sale of a loan. While we will seek to assist you in meeting your financial needs, we cannot guarantee the lowest or best terms available in the market.

We will be acting as follows:

How we will be compensated

The retail price we offer you – your interest rate, total points, and fees – will include our compensation. In some cases we may be paid all or part of our compensation by you or by the lender or investor. Alternatively, we may be paid a portion of our compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees. Also, in some cases, if you would rather pay less up-front, you may be able to pay a higher rate, in which case some or all of my compensation will be paid by the lender. We also may be paid by the lender based on other goods, services, or facilities performed or provided by us to the lender.

Our pricing for your loan is based upon current wholesale options available to us in the secondary market where closed loans are sold. Fees charged directly to you by us may vary depending on the type of loan for which you have applied.

At the time of this disclosure, we are receiving \$_____ in fees. The services which these fees are being charged include the following:

Application fee \$_____

Processing fee \$_____

Appraisal fee \$_____

Credit report fee \$_____

Automated underwriting fee \$_____

Other (list):

_____ \$_____

_____ \$_____

Of this amount, \$_____ is not refundable unless the amount is required to be refunded under applicable state or federal law upon the exercise of a right of rescission (such as the Truth in Lending Act, 15 U.S.C. §1600, et seq. and Regulation Z, 12 C.F.R. Part 226 or the provisions of the Home Equity provisions of the Texas Constitution, Article XVI, Section 50).

The estimated fees which we will charge will be as shown on the good faith estimate which we are providing to you now or which we will provide you within three (3) days in accordance with the requirements of the Real Estate Settlement Procedures Act and its implementing regulations.

_____ IS LICENSED UNDER THE LAWS OF THE
STATE OF TEXAS AND BY STATE LAW IS SUBJECT TO REGULATORY OVERSIGHT BY THE
DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. ANY CONSUMER WISHING TO
FILE **A** COMPLAINT AGAINST
_____ SHOULD COMPLETE, SIGN,
AND SEND A COMPLAINT FORM TO THE DEPARTMENT OF SAVINGS AND MORTGAGE
LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS
AND INSTRUCTIONS MAY BE DOWNLOADED AND PRINTED FROM THE DEPARTMENT'S
WEB SITE LOCATED AT <http://www.sml.state.tx.us> OR OBTAINED FROM THE DEPARTMENT
UPON REQUEST BY MAIL AT THE ADDRESS ABOVE, BY TELEPHONE AT ITS TOLL-FREE
CONSUMER HOTLINE AT 1-877-276-5550, BY FAX AT (512) 475-1360, OR BY E-MAIL AT
SMLINFO@SML.STATE.TX.US.

THE DEPARTMENT MAINTAINS THE MORTGAGE BROKER RECOVERY FUND TO MAKE
PAYMENTS OF CERTAIN TYPES OF JUDGMENTS AGAINST A MORTGAGE BROKER OR
LOAN OFFICER. NOT ALL CLAIMS ARE COMPENSABLE AND A COURT MUST ORDER THE
PAYMENT OF A CLAIM FROM THE RECOVERY FUND BEFORE THE DEPARTMENT MAY
PAY A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE
CONSULT SUBCHAPTER F OF THE MORTGAGE BROKER LICENSE ACT ON THE
DEPARTMENT'S WEB SITE REFERENCED ABOVE.

Applicant(s)

Mortgage Broker/Loan Officer

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

Signed: _____

Name: _____